

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Landmark Properties; Chan Libby III

CASE 43B-0884-R-2022

43B 194859-00

43B 194860-00

43B 194861-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 43B 194859-00, 43B 194860-00, and 43B 194861-00 each appeared in the Preliminary Decree with five ownership update remarks. As no ownership updates were filed as directed in the December 6, 2022 Order Consolidating Case And Setting Filing Deadline, the Order Removing Ownership Remarks From Abstracts Of Claim and Order Updating Mailing List was issued on February 1, 2023

Claim 43B 194861-00 has an issue remark concerning the flow rate. This will be addressed in the Findings of Fact below.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claims 43B 194859-00 and 43B 194860-00, there are no remaining issues, and therefore, no changes to be made.

2. For claim 43B 194861-00, the Preliminary Decree includes the following issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 22.00 GPM PER ACRE.

The Preliminary Decree states that the flow rate is 1.25 CFS (equivalent to 561.00 GPM) and the maximum acres is 25.00. This irrigation claim is in the Paradise Valley, with steep terrain and gravely soils throughout. For this area, a flow rate 5.00 GPM above the guideline does not merit further review. The flow rate is not questionable. The issue remark should be

removed as addressed and resolved.

CONCLUSION OF LAW

The information in the claim file is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Landmark Properties
Jon W. Olsen Trustee
3104 "O" St #204
Sacramento, CA 95816
(Return mail received)

Chan Libby III
3502 US HWY 89 S
Livingston, MT 59047

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 194859-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

***Owners:** LANDMARK PROPERTIES
JON W OLSEN TRUSTEE
3104 "O" ST #204
SACRAMENTO, CA 95816

Owners: CHAN LIBBY III
3502 US HWY 89 S
LIVINGSTON, MT 59047

Priority Date: JUNE 1, 1907

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.00 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 25.00

Source Name: EIGHTMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	3	5S	8E	PARK
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
Period of Use:	MAY 1 TO NOVEMBER 1					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		N2NW	12	5S	8E	PARK
Total:	25.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

194859-00 194860-00 194861-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 194860-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

***Owners:** LANDMARK PROPERTIES
JON W OLSEN TRUSTEE
3104 "O" ST #204
SACRAMENTO, CA 95816

Owners: CHAN LIBBY III
3502 US HWY 89 S
LIVINGSTON, MT 59047

Priority Date: OCTOBER 1, 1882
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 2.63 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 25.00
Source Name: EIGHTMILE CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	3	5S	8E	PARK
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
Period of Use:	MAY 1 TO NOVEMBER 1					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		N2NW	12	5S	8E	PARK
Total:	25.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

194859-00 194860-00 194861-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 194861-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

***Owners:** LANDMARK PROPERTIES
JON W OLSEN TRUSTEE
3104 "O" ST #204
SACRAMENTO, CA 95816

Owners: CHAN LIBBY III
3502 US HWY 89 S
LIVINGSTON, MT 59047

Priority Date: APRIL 15, 1904
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 1.25 CFS
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 4 - MODERATELY LOW
Maximum Acres: 25.00
Source Name: EIGHTMILE CREEK
Source Type: SURFACE WATER
Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	3	5S	8E	PARK
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
Period of Use:	MAY 1 TO NOVEMBER 1					
Place of Use:						

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		N2NW	12	5S	8E	PARK
Total:	25.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

194859-00 194860-00 194861-00